

Request for Proposal

For

New Jersey Individual Health Coverage (“IHC”) Program

1.0 PURPOSE, INTENT, AND FUNDING INFORMATION

1.0.1 Purpose

The general purpose of this Request for Proposal (the “RFP”) is to ensure that the funds raised by the Individual Health Coverage (“IHC”) Program Board (the “IHC Board”) through assessments of the carriers that are members of IHC Program are handled appropriately and have been accounted for and spent in furtherance of the statutory authorities and responsibilities of the IHC Board. Specifically, the purpose is to obtain the following services of an independent certified public accounting firm to:

a) Perform annual audits of the finances of the IHC Board, in conformance with generally accepted accounting principles and applicable State rules, Department of the Treasury circular letters and guidelines, for fiscal years 2000, 2001, 2002, 2003, and 2004, and such additional fiscal years as are assigned by the IHC Board and authorized under the contract; and

b) Perform an audit of the reported reimbursable losses experienced by each carrier filing for reimbursement with respect to individual health insurance policies in effect during the two-year assessment periods of 2001/2002 and 2003/2004, and such additional two-year calculation periods as are assigned by the IHC Board and authorized under the contract. Attached, as Attachment A, is a list of the carriers eligible for reimbursement of losses for 2001/2002. The IHC Board expects carriers to file losses for 2003/2004 on or about March 1, 2005.

1.0.2 Intent and Scope

The intent of the IHC Board is to have one contractor perform the duties listed above in 1.0.1(a) for fiscal years 2000 through 2004. The IHC Board reserves the right, in its sole discretion, to assign to the contractor additional fiscal year audits, with the aggregate number of additional audits not to exceed four.

The IHC Board also intends to have the same contractor perform the duties listed above in 1.0.1(b) for the 2001/2002 and the 2003/2004 reimbursable loss assessment periods. The IHC Board reserves the right, in its sole discretion, to assign to the contractor additional audits of subsequent two-year periods, with the aggregate number of additional two-year periods not to exceed two.

All additional audits assigned by the IHC Board shall be performed in accordance with the requirements of this RFP and the contract, and shall be paid for at the same rates as are the section 1.0.1(a) audits for fiscal years 2000 through 2004 and the section 1.0.1(b) audits for the 2001/2002 and 2003/2004 loss assessment periods, as appropriate.

1.0.3 Funding Information

The IHC Board is authorized to assess carriers that are members of the IHC Program for administrative expenses of the IHC Program and for the funds necessary to reimburse the reimbursable net paid losses of carriers offering individual health benefits plans. The cost of the reimbursable loss audits and services described above will be shared equally by the audited carrier(s) and the IHC Board, as provided by N.J.A.C. 11:20-8.8(b). However, the IHC Board will provide full payment directly to the auditor.

1.1 Statute and Background

The New Jersey Individual Health Insurance Reform Act (“the Act”) was enacted on November 30, 1992, as P.L. 1992, Chapter 161 and has been amended a number of times. These laws are codified at N.J.S.A. 17B:27A-2 et seq. The Act created the IHC Program and established a Board of Directors to administer the IHC Program.

The Act requires all insurance companies, health service corporations and health maintenance organizations authorized to issue health benefits plans to individuals in New Jersey to offer only standardized plans established by the IHC Board after August 1, 1993 and a basic and essential health care services plan after March 1, 2003. Furthermore, the Act establishes an assessment mechanism to reimburse certain carriers for reimbursable net paid losses incurred in the individual health insurance market.

Carriers issuing individual health benefits plans are required to adhere to the following underwriting guidelines:

- **Guaranteed Issue** - No individual may be denied coverage, regardless of health, age, gender, occupation or any other factor unless eligible for coverage under a group benefits plan or Medicare.
- **Guaranteed Renewal** - No individuals may have their coverage canceled, except for non-payment of premium or fraud.
- **Minimum Loss Ratio** – This provision imposes cost controls on premiums by limiting carriers to a maximum of 25 percent overhead and requiring them to pay out in the form of benefits a minimum of 75 percent of the premium dollars they collect.
- **Community Rating** - Rates for all standard policies must be the same for the same effective date, rating class and benefit plan. Rates for the basic and essential healthcare services plan, which was first available in 2003, may vary up to a 3.5:1 ratio based on age, gender and geographic location.

The IHC Board has broad statutory powers to implement and oversee the IHC Program, including specific authority to enter into contracts which are necessary and proper to carry out the provisions and purposes of the Act, which includes the selection of a certified public accounting firm to perform the duties specified herein.

2.0 IHC PROGRAM AUDIT

2.1 Specifications

The IHC Program seeks an annual audit of its 2000, 2001, 2002, 2003, and 2004 financial records, to be completed within 120 days of the Board providing access to the Board's records. The audit shall be conducted by an independent certified public accounting firm in conformance with generally accepted accounting principles and applicable State rules, Department of the Treasury circular letters and guidelines. The IHC Board maintains its own bank accounts, pays its bills, contracts through the Department of Banking and Insurance for full-time staff persons and services, and maintains offices at 20 West State Street, 11th Floor, Trenton, New Jersey. The audit of financial statements shall be in accordance with generally accepted auditing standards. The IHC Program's fiscal year is July 1 through June 30. The audit will be performed at the offices of the IHC Board, where the records of the IHC Program are maintained and staff of the IHC Board are available to answer questions and provide information and documents required. The audit shall encompass the following items:

2.1.1 The handling of IHC Program funds and accounting of assets and money of the IHC Program;

2.1.2 A determination that administrative expenses have been properly allocated and are reasonable;

2.1.3 A determination that sufficient internal controls exist to ensure the proper handling of IHC Program funds and adequate oversight of spending;

2.1.4 The annual financial report of the IHC Program;

2.1.5 The calculation of any assessment of carriers for net paid losses; and

2.1.6. Any additional items necessary for the completion of an annual audited statement.

2.2 Reporting

Upon completion of the audits, the IHC Board will require complete, bound copies of the financial statements and a Report to Management which states the findings for each of the Fiscal Year audits, with respect to the specific categories described above, and provides constructive recommendations to the IHC Board for improving financial accounting and reporting systems, and internal controls of the IHC Program. The auditor will also be expected to present its findings before meetings of the IHC Operations Committee (the "Committee") and meetings of the IHC Board and to respond to all questions by Board members and staff as to the findings of the audit.

3.0 AUDIT OF CARRIERS REPORTING REIMBURSABLE NET PAID LOSSES

3.1 Specifications of Audit

The IHC Board, pursuant to its power to audit member carriers, has resolved to audit the net paid losses of carriers reporting reimbursable losses for the two-year assessment periods of 2001/2002 and 2003/2004. For the 2001/2002 two-year assessment period, six carriers have reported net paid losses, which total approximately \$6,600,000. Refer to Attachment A.

The audits shall encompass a determination as to the accuracy of the net paid losses reported on Exhibit K, the New Jersey Individual Health Coverage Program Assessment Report, attached hereto as Attachment B, and as to compliance with N.J.A.C. 11:20-8, the reporting instructions for Exhibit K, attached hereto as Attachment C. A copy of the audit regulations, N.J.A.C. 11:20-2.8, is attached hereto as Attachment D. These audits will require the auditor to review the reported claims and premiums of individual policy or contract holders incurred by carriers reporting net paid losses, and the carriers' net investment income. The auditor will be required to conduct the audit of reimbursable losses at the offices of the carriers reporting reimbursable losses, where the documents and personnel necessary to complete the audits are located. The audit for each carrier seeking reimbursement shall be completed within 120 days of the date that the carrier makes available the information required to be provided pursuant to N.J.A.C. 11:20-2.8(c).

3.2 Reporting

Upon completion of each audit of net paid losses, the IHC Board will require a Report to Management which states the findings of each audit with respect to the specific categories described above, and provides recommendations to the IHC Board for adjustments to the net paid losses for purposes of increasing or reducing the amount of reimbursement provided by the IHC Board. The auditor will also be expected to present its findings before a meeting of the IHC Operations Committee and a meeting of the IHC Board and to respond to questions by Committee members, IHC Board members, staff, and counsel.

4.0 ADDITIONAL WORK AND/OR SPECIAL PROJECTS

4.1 It may be desirable for the Board to have the auditor perform additional work or special projects that are not contemplated by this RFP.

4.2 The auditor shall not begin performing any additional work or special projects without first obtaining written approval from the IHC Board or the IHC Board's Executive Director.

In the event of additional work and/or special projects, the auditor must present a written proposal to perform the additional work to the IHC Board or the IHC Board's Executive Director. The proposal must provide justification for the necessity of the additional

work. The relationship between the additional work and the base contract work must be clearly established by the auditor in its proposal.

The auditor's written proposal must provide a detailed description of the work to be performed, broken down by task and subtask. The proposal must also contain details on the level of effort, including hours, labor categories, etc., necessary to complete the additional work.

The written proposal must detail the cost necessary to complete the additional work in a manner consistent with the contract. The written cost proposal must be based upon the hourly rates, unit costs or other cost elements submitted by the auditor in the auditor's original bid proposal submitted in response to this RFP. The cost proposal must set forth the net estimate of hours needed to perform the work. The firm fixed price must specifically reference and be tied directly to costs submitted by the auditor in its original bid proposal. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval by the IHC Board of the auditor's written proposal, the IHC Board or the IHC Board's Executive Director will provide written approval.

No additional work or special project may commence without the written approval of the IHC Board or the IHC Board's Executive Director. In the event the contractor proceeds with additional work or special projects without the written approval of the IHC Board or the IHC Board's Executive Director, it shall be at the contractor's sole risk. The IHC Board shall be under no obligation to pay for work done without the written approval of the IHC Board or the IHC Board's Executive Director.

5.0 GENERAL BIDDING AND SELECTION INFORMATION

5.1 The following information must be submitted by all bidders. Its purpose is to aid in evaluating the bidder's ability to perform the work required. Failure to submit all information detailed in Paragraphs 5.1.3.1 through 5.1.3.12 below may result in the rejection of a proposal.

5.1.1 Name, title, corporate address and telephone number of the official responsible for the bid and for other personnel similarly authorized to conduct negotiations.

5.1.2 A description of the bidder's approach to the project. Proposals should be prepared in detail, providing a straightforward, concise description of the firm's abilities to satisfy the requirements of the proposal specified in the RFP. Emphasis should be on completeness and clarity of content.

5.1.3 A plan for completing the project. The plan shall include the following:

5.1.3.1 A statement of the general background, experience and qualifications of the bidder. Special mention should be made of experience in handling or administering similar governmental or quasi-governmental programs;

5.1.3.2 A statement of the background and experience of the bidder with National Association of Insurance Commissioners (NAIC) annual statement reporting;

5.1.3.3 Resumes or curriculum vitae of the qualifications of management, professional and technical personnel who will work on this assignment;

5.1.3.4 An estimate of the number of hours that each Program audit and each audit of reimbursable losses will take to complete;

5.1.3.5 The blended rates that the bidder will charge including the rates specific to each labor category; and the method for calculating the rates should the IHC Board assign any additional audits for future periods.

5.1.3.6 A copy of the firm's certificate of incorporation or authority and proof that the firm is a certified public accounting firm. All New Jersey corporations must obtain a Certificate of Incorporation from the Office of the Secretary of State prior to conducting business in the State of New Jersey. If a firm is a corporation incorporated in a state other than New Jersey, the firm must obtain a Certificate of Authority to do business from the Office of the Secretary prior to receipt of final contract award;

5.1.3.7 A completed Ownership Disclosure Form. Contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to, or at the time of, proposal submission, the firm has disclosed the names and addresses of all its owners holding 10% or more of the corporation or partnership's stock or interest. Refer to N.J.S.A 52:25-24.2. A copy of the form can be obtained by accessing the website: www.state.nj.us/treasury/purchase/forms.htm;

5.1.3.8 A description of the methods to be used to segregate the time associated with the IHC Program from the bidder organization's normal book of business to ensure that the IHC Program Board is paying only for those expenses which actually relate to the IHC Program administration. The contract to be awarded will provide that in the event of any material modification to the IHC Program by the New Jersey Legislature, the parties will re-negotiate in good faith the terms of the agreement;

5.1.3.9 A list of clients or organizations, which can be used as references for work performed, particularly in health insurance-related areas. Selected references may be contacted by the Operations Committee of the IHC Board or the IHC Board's staff to determine the quality of work performed;

5.1.3.10 The description of the bidder's policy with respect to reimbursement of expenses including any caps on such expenses.

5.1.3.11 The following miscellaneous forms which can be obtained by accessing the website www.state.nj.us/treasury/purchase/forms.htm:

- a. Requirement to Provide a Certification in Compliance with MacBride Principles and Northern Ireland Act of 1989
- b. Set-off for State Tax
- c. Standard Terms and Conditions
- d. Affirmative Action Employee Information Report
- e. Affirmative Action Supplement to Bid Specifications

5.1.3.12 W-9 Questionnaire and Instructions, which can be obtained by accessing the website www.state.nj.us/treasury/omb/forms/pdf/w-9.pdf for the questionnaire and www.state.nj.us/treasury/omb/forms/w-9inst.pdf for the instructions.

5.2 There will be a mandatory pre-bid conference at 10:00 AM on July 12, 2004 in Room 219 of the Mary Roebling Building, 20 West State Street, Trenton, New Jersey.

6.0 SUBMISSION OF PROPOSALS

6.1 The address for all correspondence with the IHC Board is:

Rosaria Lenox
Program Accountant
NJ Individual Health Coverage Program
20 West State Street, 11th Floor
PO Box 325
Trenton, New Jersey 08625-0325

Fax: (609) 633-2030
Phone: (609) 633-1882 x50303
E-mail address: rlenox@dob.state.nj.us

6.2.1.1 Requests for any additional information or explanation must be submitted in writing (and may be mailed, e-mailed or faxed) to the IHC Board. Only written responses may be relied on.

6.3 Submit 9 copies of bid documents.

6.4 Bid documents are to be delivered and received at the address listed above no later than 5:00 PM on August 6, 2004. Bid documents or clarification of same (except as requested by the IHC Board) received after this time and day may not be considered. Be sure to allow time for delivery by mail. There will be a public opening of all bids on August 9, 2004 at 10:00 AM in the 10th Floor Conference Room of the Mary Roebling Building, 20 West State Street, Trenton, New Jersey.

6.5 The State of New Jersey, the IHC Program, the IHC Board and the IHC Board's staff are not liable for any costs incurred by any bidder in responding to this RFP.

7.0 BID PROCESSING

7.1 The IHC Board reserves the right to accept or reject any and all proposals. The selection will be made on the basis of the best interests of the residents of the State of New Jersey and the necessities of the IHC Program. The IHC Board reserves the right to accept or reject any exception taken by a bidder to the terms and conditions of the RFP.

7.2 The IHC Board may require a firm to clarify any information submitted in its proposal. This clarification will, however, in no way change the proposal.

7.3 In the event it becomes necessary to revise any part of this Request for Proposal, written revisions will be provided to all firms who initially received the Request for Proposal.

7.4 Oral Presentation of Bid

Firms, which submit a proposal in response to this Request for Proposal, may be required to give an oral presentation of their proposal to the IHC Board and/or the IHC Operations Committee. The purpose of such presentation is to provide an opportunity for the firm to clarify or elaborate on its proposal. Firms may not attend the oral presentations of their competitors. Firms must clearly understand that it is the IHC Board's sole option to determine which firms, if any, will be invited to make oral presentations. Firms shall not construe the list of firms invited, if any, to imply acceptance or rejection of any proposal(s). The IHC Board will schedule the time and location of any such presentations.

8.0 SELECTION

8.0.1 The contract will be awarded by the IHC Board based upon the findings and recommendations of the Operations Committee of the IHC Board. The Committee will review the proposals submitted by all bidders.

8.0.2 The Operations Committee will evaluate the contractor on the basis of the factors set forth below and their relative weight:

- | | |
|------------------------------------------------------------------------------------------------------------------------------------|-----|
| • General background, experience, and qualifications of the bidder: | 10% |
| • Experience in NAIC Annual Statement Reporting : | 40% |
| • Qualifications of personnel to be assigned to this project: | 25% |
| • Demonstrated willingness of the bidder to provide necessary assistance to the IHC Board in the time frames specified in the RFP: | 10% |
| • Costs including rates and reimbursement policy: | 10% |
| • The strength of the bidder's references: | 5% |

8.0.3 The Committee's recommendations to the IHC Board will be on the basis of the best interest of the IHC Board and shall provide a balance between cost and technical merit as determined by the Committee. The Committee will prepare a written report setting forth all technical scoring and the justification for the recommendation made to the IHC Board. The IHC Board shall adopt the recommendation of the Committee or shall undertake its own scoring using the same standards used by the Committee.

9.0 BOARD RIGHTS AND RESPONSIBILITIES

9.1 The IHC Board, or its representatives, shall have access to Contractor's work papers and documentation at reasonable times during the contract period at the IHC Board's request. Ownership of all data, material, and documentation (excluding work papers) originated and prepared for the IHC Board pursuant to this Request for Proposal shall belong exclusively to the IHC Board.

9.2 The IHC Board may authorize the Contractor(s) to perform additional activities beyond the scope of the RFP. Any such authorization shall be given in writing. Rates for such services shall be agreed upon by the parties and shall be set forth in writing.

9.3 The IHC Board shall designate a Project Manager with the contractor, who will be the sole point of contact for all matters pertaining to the operation of this contract.

9.4 The IHC Board reserves the right to terminate any contract(s) entered into as a result of this RFP providing written notice has been given to the Contractor(s) at least thirty (30) days prior to such proposed termination date.

10.0 CONTRACTOR RESPONSIBILITIES

10.1 The Contractor shall be required to sign the confidentiality agreement attached hereto as Attachment E.

10.2 The Contractor shall provide the IHC Board with access to all records, files and reports associated with the IHC Program during normal working hours. All records, files and reports associated with the IHC Program are and shall remain the property of the IHC Board and are to be turned over to the IHC Board or to a successor firm, should there be one.

10.3 The Contractor must support hearings, meetings and other activities that may result from work performed under the contract resulting from this procurement. The Contractor should also be prepared to support the IHC Board in litigation or appeals initiated by the IHC Board or carriers subject to audit. This work is within the scope of this proposal. Compensation shall be based on the bid price associated with the level of expertise necessary to support hearings, meetings or other activities rather than a blended rate.

10.4 The Contractor will commence work within 10 days of notification of the contract award.

10.5 The Contractor is required to maintain time records pertaining to individuals that provide services under the contract resulting from the RFP. These records must be available to the IHC Board at reasonable times during the contract period.

10.6 The Contractor agrees not to discriminate in employment and agree to abide by all anti-discrimination laws including but not limited to those contained within N.J.S.A. 10:2-1 through 10:2-4, N.J.S.A. 10-5 *et seq.* and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder.

10.7 The Contractor(s) must comply with all local, state and federal laws, rules and regulations applicable to this engagement and to the goods delivered and/or services performed thereunder.

10.8 It is agreed and understood that any contract(s) issued and/or order(s) placed as a result of this RFP shall be governed and construed and the rights and obligations of the parties thereto shall be determined in accordance with the laws of the State of New Jersey.

10.9 The Contractor(s) shall assume all risk of and responsibility for, and shall indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments, costs, and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract.

11.0 TITLE

No firm shall pay, offer to pay, or agree to pay, a fee, commission, compensation, gift, etc., or influence and/or attempt to influence any employee of the IHC Board or member of the IHC Board or its Committees, to secure unwarranted privileges or advantages for the firm or any other person.

12.0 CONFLICT OF INTEREST

The Contractor must not have a conflict of interest in providing services to the IHC Board, as determined by the IHC Board. The bidder selected will not be permitted to sub-contract any work required as part of this engagement, unless authorized in writing by the IHC Board. Any subcontractor must not have a conflict of interest in providing services to the IHC Board, as determined by the IHC Board.

13.0 STANDARD TERMS AND CONDITIONS

Any contract between the IHC Board and the Contractor shall include the standard terms and conditions. Refer to 5.1.3.11c above.

List of Attachments

Attachment A	List of Carriers Filing for Reimbursement of Losses for 2001/2002
Attachment B	Exhibit K, New Jersey Health Coverage Program Assessment Report
Attachment C	N.J.A.C. 11:20-8, Reporting Instructions for Exhibit K
Attachment D	N.J.A.C. 11:20-2.8, Audit Regulations
Attachment E	Confidentiality Agreement

Attachment A

Reported Reimbursable Losses

2001/2002 Reported Losses				
Eligible for reimbursement	Premiums Earned	Claims Paid	Net Investment Income	Reported Loss
Aegon(PFL/Monumental)	\$77,705.00	\$16,512.00	(\$119,687.00)	(\$64,791.00)
Celtic Life Ins. Co	\$337,666.00	\$558,054.00	(\$591,147.00)	(\$849,557.00)
Fortis	\$161,452.00	\$392,563.00	(\$1,845,650.00)	(\$2,329,391.00)
Metropolitan	\$220,465.00	\$236,368.00	(\$720,724.00)	(\$811,666.00)
Principal	\$88,035.77	\$517,072.26	(\$1,409,070.91)	(\$2,036,262.87)
Trustmark	\$0.00	(\$488.00)	(\$456,060.00)	(\$523,980.00)
TOTAL REPORTED LOSSES				(\$6,615,647.87)

ATTACHMENT B

Exhibit K

New Jersey Individual Health Coverage Program Assessment Report

EXHIBIT K: New Jersey Individual Health Coverage Program Assessment Report For the Two-Year Calculation Period -

All carriers reporting accident and health premium to the New Jersey Department of Banking and Insurance shall submit this report and attachments in accordance with the provisions of N.J.A.C. 11:20-8. Reports must be completed and returned on or before March 1, 2003 and by March 1 of the first year of each two-year calculation period thereafter, to the Executive Director, IHC Program, PO Box 325, (20 West State Street), Trenton, NJ 08625-0325.

Part A. Carrier Information

1. Carrier's name: _____ 2. NAIC Number: _____
3. Full name of all affiliated carriers reporting any accident and health premium in New Jersey

Part B. Information of Person Completing this Report

1. Name (print or type): _____ 2. Title: _____
3. Telephone No.: _____ Facsimile No.: _____ E-mail: _____
4. Mailing Address: _____

Part C. Program Membership for the Two-Year Calculation Period (Attach worksheet(s))

Members and Non-members with reportable accident and health premium in New Jersey MUST complete and return one copy of the attached "Exhibit K-Part C Premium Data Worksheet" for each of the affiliates listed above. If any of the affiliates has any net earned premium for the two-year period, the carrier is a Member and shall record the amount below. If no affiliates have net earned premium, then the carrier is a Non-member and the carrier shall check the Non-member box below.

Member's net earned premium, including all affiliates, for the two-year period:

\$ _____; or

☐ Non-member of the IHC Program with no net earned premium

Part D. Number of Non-group Persons Enrolled by Member Carrier (Attach worksheet(s))

Members MUST complete and return one copy of the attached "Exhibit K Part D Enrollment Data Worksheet" for each of the affiliates listed above that issued or renewed non-group enrollment as listed on the attached Worksheet.

Average non-group enrollment for the two-year period: _____

Part E. Member's Net Paid Gain (Loss) for Individual Health Benefits Plans

- | | |
|----------------------------------------|----------|
| a. PREMIUM EARNED | \$ _____ |
| b. CLAIMS PAID | \$ _____ |
| c. NET INVESTMENT INCOME | \$ _____ |
| d. NET PAID GAIN (LOSS) [115% (a+c)]-b | \$ _____ |

Part F. Certification

I certify that I am an officer of the company, that the information provided in this report and all attachments is accurate and complete, and that it has been prepared in accordance with the provisions of N.J.A.C. 11:20-8.

Name of Officer

Title

Date

Exhibit K Part C Premium Data Worksheet

The purpose of this Part C Premium Data Worksheet is to demonstrate whether a carrier is a member of the IHC Program by virtue of having any "net earned premium" during the two-year calculation period. "Net earned premium" means the premiums earned in this State on "health benefits plans," less return premiums thereon and dividends paid or credited to policy or contract holders on the health benefits plan business. Health benefits plans include, but may not be limited to the following coverages: health insurance for individuals or groups of any size; Medicare + Choice contracts (premium should be limited to premium from insureds); Medicare Cost and Risk; premium from Medicare Demonstration plans, Medicaid; New Jersey FamilyCare Part A and NJ KidCare Part A; accident medical; student accident and health medical if expense incurred; specified disease if expense incurred; and limited benefits if expense incurred; and Champus or TriCare. The attached report provides a carrier with a framework for accurately calculating its net earned premium. The definitions of "net earned premium" and "health benefits plans" are set forth at N.J.A.C. 11:20-1.2.

Directions:

Copy the attached worksheet, if necessary, and provide the following information for each affiliate:

- The name of the affiliate.
- Section 1: The total accident and health premium reported on the annual NAIC statement blank for both calendar years of the two-year calculation period for that affiliate.
- Section 2: The total premium amounts earned in each calendar year of the two-year calculation period for each of the excepted types of coverage listed on the worksheet for each affiliate.
- Section 3: To arrive at the net earned premium in section 3, subtract the total excepted premium totals reported in Section 2 from the accident and health premium totals reported in Section 1. All premium that is not from some type of excepted coverage is net earned premium from health benefits plans.

- Each affiliate's worksheet shall be attached to the carrier's one-page Exhibit K.

Members shall report the combined two-year net earned premium calculated from each affiliate's Exhibit K Part C Premium Data Worksheet on Part C of the Exhibit K Assessment Report.

If the combined two-year net earned premium total from each affiliate's Exhibit K Part C Premium Data Worksheet is zero either because all of the premium is from excepted coverages or because the carrier had no accident and health premium, then the carrier shall assert Non-member status by checking the Non-member box on Exhibit K Part C, and completing the certification in Part F.

Exhibit K Part C Premium Data Worksheet for the Two-Year Calculation Period _____ - _____

Name of Affiliate: _____ Name of Carrier on Exhibit K: _____

Carriers shall complete and return this page for each affiliate along with Exhibit K.

Section 1: Total A&H Premium	Premium for 1 st Year of 2-Year Period	Premium for 2 nd Year of 2-Year Period	Two-Year Total
Amount of Accident & Health Premium on New Jersey NAIC State Blank:			

Section 2: List of Excepted Benefits and Premium	Premium for 1 st Year of 2-Year Period	Premium for 2 nd Year of 2-Year Period	Total for 2-year Period
a. Medicare + Choice coverage (excepted premium amount is limited to amounts paid by federal government and does not include premium paid insureds)	\$	\$	\$
b. contracts funded pursuant to the "Federal Employee Health Benefits Act of 1959," 5 U.S.C. § 8901-8914	\$	\$	\$
c. excess risk or stop loss insurance coverage issued by a carrier in connection with any self insured health benefits plan	\$	\$	\$
d. Medicare supplement policies or contracts	\$	\$	\$
e. non-expense incurred specified disease coverage	\$	\$	\$
f. coverage only for accident, disability income insurance, or any combination	\$	\$	\$
g. coverage issued as a supplement to liability insurance	\$	\$	\$
h. liability insurance, including general liability insurance and automobile liability insurance	\$	\$	\$
i. workers' compensation or similar insurance	\$	\$	\$
j. automobile medical payment insurance	\$	\$	\$
k. credit-only insurance	\$	\$	\$
l. coverage for on- site medical clinics	\$	\$	\$
m. other similar insurance coverage, as specified in federal regs., under which benefits for medical care are secondary or incidental to other insurance benefits	\$	\$	\$
n. limited scope dental or vision benefits*	\$	\$	\$
o. benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof *	\$	\$	\$
p. such other similar, limited benefits as are specified in federal regulations	\$	\$	\$
q. hospital confinement indemnity coverage if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health benefits plan maintained by the same plan sponsor, and those benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor	\$	\$	\$
r. coverage supplemental to the coverage provided under chapter 55 of Title 10, United States Code (10 U.S.C. § 1071 et seq.)	\$	\$	\$
s. similar supplemental coverage provided to coverage under a group health plan	\$	\$	\$
Total excepted premium:	\$	\$	\$

* Include as an excepted benefit if the coverage is provided under a separate policy, certificate or contract of insurance or is otherwise not an integral part of the plan.

Section 3: Calculation of "Net Earned Premium"	Premium for 1 st Year of 2-Year Period	Premium for 2 nd Year of 2-Year Period	2-Year Net Earned Premium Total
Net Earned Premium = (Section 1 premium – Section 2 premium))	\$	\$	\$

**Exhibit K Part D Enrollment Data Worksheet
for the Two-Year Calculation Period _____ - _____**

Name of Affiliate: _____ Name of Carrier on Exhibit K:

Carriers shall complete and return this page with Exhibit K.

For a through e below, provide the number of covered lives as of the end of each calendar quarter during the Two-Year Calculation Period for each of the categories of coverage described below, and the two-year total for each category. Non-members should be reporting no covered lives in any of the categories below because premium from all of the coverage listed below result in net earned premium.

- | | Total Q1-Q8 |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| a. Persons covered under standard individual health benefits plans or basic and essential health care services plans | |
| Q1 _____ Q2 _____ Q3 _____ Q4 _____ | |
| Q5 _____ Q6 _____ Q7 _____ Q8 _____ | _____ |
| b. Community rated conversion policy persons | |
| Q1 _____ Q2 _____ Q3 _____ Q4 _____ | |
| Q5 _____ Q6 _____ Q7 _____ Q8 _____ | _____ |
| c. Medicaid recipients (Include NJ FamilyCare Part A, NJ KidCare Part A but no other NJ FamilyCare or NJ KidCare lives) | |
| Q1 _____ Q2 _____ Q3 _____ Q4 _____ | |
| Q5 _____ Q6 _____ Q7 _____ Q8 _____ | _____ |
| d. Medicare Plus Choice lives, Medicare Risk and Cost lives, Medicare Demonstration Project lives (Do <u>not</u> include Medicare Supplement) | |
| Q1 _____ Q2 _____ Q3 _____ Q4 _____ | |
| Q5 _____ Q6 _____ Q7 _____ Q8 _____ | _____ |
| e. Two-Year non-group enrollment total (Total Q1-Q8 for a through d): | _____ |
| f. Average two-year non-group enrollment to be reported on Exhibit K Part D (line e divided by 8): | _____ |

Attachment C

Reporting Instructions for Exhibit K

SUBCHAPTER 8. THE IHC PROGRAM ASSESSMENT REPORT

11:20-8.1 Scope and applicability

(a) This subchapter sets forth reporting and certification requirements for premium and non-group enrollment data of Program members and other carriers with reportable accident and health premium in New Jersey. This subchapter also sets forth reporting and certification requirements for premium, claims, and net investment income data of Program members issuing individual health benefits plans.

(b) This subchapter shall apply to all carriers with reportable accident and health premium in New Jersey for any portion of the two-year calculation period for which reports under this subchapter are required to be filed.

11:20-8.2 Filing of the assessment report form

(a) Every carrier with reportable accident and health premium in New Jersey shall file the Exhibit K Assessment Report form, a copy of the Exhibit K Part C Premium Data Worksheet, and a copy of the Exhibit K Part D Enrollment Data Worksheet which are set forth as Exhibit K in the Appendix to this chapter, incorporated herein by reference, on or before March 1, 2003 and on or before March 1 of the year immediately following every two-year calculation period thereafter.

(b) If a carrier with reportable accident and health premium in New Jersey is an affiliated carrier, the Exhibit K Assessment Report, the Part C Premium Data Worksheet and the Part D Enrollment Data Worksheet shall be filed as follows:

1. Each affiliated carrier shall file one copy of the Exhibit K Part C Premium Data Worksheet whether or not that affiliated carrier reported accident and health premium in New Jersey during the two-year calculation period.

2. Each affiliated carrier shall file one copy of the Exhibit K Part D Enrollment Data Worksheet if the carrier issued or renewed any of the coverages specified on the Enrollment Data Worksheet. If an affiliated carrier neither issued nor renewed any of the coverages specified on the Enrollment Data Worksheet, it is not necessary for that affiliated carrier to file the Exhibit K Part D Enrollment Data Worksheet.

3. The combined affiliated carriers, identified using a single carrier name, shall file one copy of the Exhibit K Assessment Report. The information specified on the Assessment Report shall be the aggregated information supplied on the Premium Data Worksheets for all affiliated carriers and the Enrollment Data Worksheets for those affiliated carriers with non-group person enrollment.

4. The Assessment Report along with the Premium Data Worksheet(s) and the Enrollment Data Worksheet(s) shall be filed together. For example, a carrier with three affiliates with reportable accident and health premium in New Jersey but only two of which issue non-group coverage, would file one Exhibit K with the aggregated information for all affiliated carriers, three copies of the Exhibit K Part C Premium Data Worksheet, and two copies of the Exhibit K Part D Enrollment Data Worksheet.

(c) Certified report forms shall be submitted by facsimile, with paper copy to follow by mail, or mailed or delivered to the Executive Director at the address listed in [N.J.A.C.](#)

[11:20-2.1\(h\)](#).

11:20-8.3 Calculation of net earned premium and determination of program membership for the two-year calculation period

(a) In Part C of the Exhibit K Assessment Report, each member shall set forth its total net earned premium from plans issued, continued or renewed for all affiliated carriers during the preceding two-year calculation period. Net earned premium reported in Part C of Exhibit K shall be consistent with the data set forth on the Exhibit K Part C Premium Data Worksheet(s).

(b) In Part C of the Exhibit K Assessment Report, each carrier with no net earned premium in the preceding two-year calculation period shall assert its status as a non-member by checking the box designated for non-members on the assessment report form. Non-members are carriers with either no net earned premium or whose Section 3 Calculation of Net Earned Premium on the Exhibit K Part C Premium Data Worksheet is equal to 0.

(c) Every carrier, whether a member or not, shall complete an Exhibit K Part C Premium Data Worksheet for each affiliate and shall attach each Worksheet to its Exhibit K.

1. In Section 1 of the Premium Data Worksheet, the carrier shall report the total accident and health premium reported on its annual statement blank for each calendar year of the two-year calculation period.

2. In Section 2 of the Premium Data Worksheet, the carrier shall report the total net earned premium in each calendar year of the two-year calculation period for each of the excepted types of coverage which are specifically identified in Section 2 of the Worksheet.

3. In Section 3 of the Premium Data Worksheet, the carrier shall calculate the affiliate's net earned premium by subtracting the total excepted premium totals reported in Section 2 from the accident and health premium totals reported in Section 1 of the Worksheet.

4. The carrier shall report the aggregated two-year net earned premium on Exhibit K Part C by taking the sum of each affiliate's two-year net earned premium total as calculated on the Exhibit K Part C Premium Data Worksheet.

11:20-8.4 Calculation of average non-group enrollment for the two-year calculation period

(a) In Part D of the Exhibit K Assessment Report, each carrier shall report its aggregated average non-group enrollment for all affiliates for the preceding two-year calculation period.

(b) Each carrier shall complete an Exhibit K Part D Enrollment Data Worksheet for each affiliate that issued or renewed the categories of non-group enrollment listed on the worksheet and shall attach each Worksheet to its Exhibit K.

1. In Section a of the Enrollment Data Worksheet, the carrier shall report all community rated persons covered under individual health benefits plans, and all persons covered under as the basic and essential health care services plan as of the last day of the end of each calendar quarter during the two- year calculation period, and shall report the total of all eight quarters. For contracts issued prior to August 1, 1993, where a carrier's administrative systems cannot provide the number of actual covered persons, the following factors shall be used to convert contracts or subscribers to the total number of covered persons: single = 1; husband and wife = 2; adult and child(ren) = 2.8; family = 3.9. If a husband and wife category is not used, a carrier shall use a compromise factor of 3.33 in order to reflect the husband and wife category in the family factor.

2. In Section b of the Enrollment Data Worksheet, the carrier shall report all community rated conversion policy persons as of the last day of the end of each calendar quarter during the two-year calculation period, and shall report the total of all eight quarters.

3. In Section c of the Enrollment Data Worksheet, the carrier shall report all Medicaid recipients, including NJ KidCare Part A recipients and NJ FamilyCare Plan A recipients, but no recipients of any other plans through NJ KidCare or NJ FamilyCare, as of the last day of the end of each calendar quarter during the two-year calculation period, and shall report the total of all eight quarters.

4. In Section d of the Enrollment Data Worksheet, the carrier shall report all Medicare Plus Choice and Medicare cost and risk lives and Medicare Demonstration Project lives as of the last day of the end of each calendar quarter during the Two-Year Calculation Period, and shall report the total of all eight quarters.

5. In Section e of the Enrollment Data Worksheet, the carrier shall calculate the two-year non-group enrollment total by adding the totals from a through d of the Worksheet.

6. In Section f of the Enrollment Data Worksheet, the carrier shall calculate the average two-year non-group enrollment to be reported on Exhibit K Part D by dividing the total two-year non-group enrollment total by eight.

11:20-8.5 Calculating net paid losses or gains

(a) For purposes of completing Part E of the Assessment Report form, each member issuing individual health benefits plans shall provide data for its individual health benefits plans issued or renewed pursuant to sections 2b(1) or 3 of the Act (N.J.S.A. 17B:27A-3b(1) or 4), or the basic and essential health care services plan pursuant to the requirements of P.L. 2001, c.368 for the preceding two-year calculation period.

1. All data shall be for direct business only; reinsurance accepted shall not be included, and reinsurance ceded shall not be deducted.

2. The method used by a member to allocate to sublines of the individual line shall be consistent with the method used by a member to allocate to the individual line.

(b) In Part E of the Exhibit K Assessment Report, each member issuing individual health benefits plans shall report premium earned. Premium earned shall be adjusted:

1. By any changes in non-admitted premium assets consistent with statutory report requirements, except that any change in non-admitted assets associated with premium accrued shall be reported consistent with the bases, as appropriate to the member, from the member's NAIC annual statement, adjusted for the individual health benefits plan for which the report is being made, as necessary; and

2. To reflect the premium that a carrier should have earned based on charging premiums consistent with the rate filings the member filed with the board for the applicable time period.

(c) In Part E of the Exhibit K Assessment Report, each member issuing individual health benefits plans shall report claims paid. Claims paid shall be reported on a basis consistent with statutory reporting, as is appropriate for the member based on the member's NAIC annual statement, adjusted as necessary for the individual health benefits plans for which the report is being made. Claims paid as reported on Exhibit K shall include reimbursement for charges made by providers for services and supplies, surcharges mandated pursuant to the New York Health Care Reform Act of 2000, P.L. 1999, c.1, codified in the [New York Public Health law, section 2807-c through 2807-w](#), and network access fees where such fees may be demonstrated to have reduced specific claim payments and where the carrier has reported such fees as claims on its NAIC annual statement blank. In reporting claims paid, profits made by affiliated providers of service

shall not be included in paid claims. Claims paid shall be adjusted to only include claims that should have been paid according to the terms and conditions of the individual health benefits policy and [N.J.S.A. 17B:27A-2](#) et seq.

(d) In Part E of the Exhibit K Assessment Report, each member issuing individual health benefits shall report its net investment income. Net investment income shall be calculated in accordance with statutory reporting requirements. For purposes of Exhibit K reporting, and notwithstanding how a carrier allocates net investment income to individual lines in other statutory reports or filings, carriers shall allocate net investment income consistent with the following basis, adjusted for the individual health benefits plans for which the report is being made as necessary.

1. The cost of granting and servicing premium notes and policy loans and liens shall be allocated to investment expense. The resulting net income on premium notes and policy loans and liens may be distributed to those lines of business which produced such income. In making such distribution, due consideration shall be given to the variation in the interest rate and incidence of expense on such notes, loans, and liens.

2. Net investment income, after adjustment, if any, as permitted by (d)1 above, shall be distributed to major and secondary lines of business in proportion to the mean funds of each line of business, after suitable adjustment, if any, on account of policy loans, except that any miscellaneous interest income arising from policy or annuity transactions may be allocated directly to the line of business producing such income. Mean funds refers to the average net cash flow balance over the two-year calculation period for which the calculation is being made, with the average net cash flow balance determined on a monthly or quarterly basis. The average net cash flow balance is the sum of the beginning of the month or quarter and end of month or quarter cash flow balances divided by two. The "cash flow balance" at the beginning of the month or quarter is equal to the inception to date paid premiums, plus the net investment income at the beginning of the month or quarter, plus loss reimbursement received, less paid claims, less refunds, less loss assessment paid, and less paid expenses. The "cash flow balance" at the end of the month or quarter is equal to the inception to date paid premiums, plus loss reimbursement received, less paid claims, less refunds, less loss assessment paid and less paid expenses, plus net investment income at the beginning of the month or quarter. "Inception to date" shall mean a measurement of cash flow from the first date the carrier receives premium for standard individual health benefits plans until the end of the most recent two-year calculation period.

(e) In Part E of the Exhibit K Assessment Report, each member issuing individual health benefits plans shall report its net paid gain or net paid loss. The net paid gain or loss for the two-year calculation period shall be determined by taking the claims paid on individual health benefits plans (as set forth on line b in Part E of Exhibit K), less 115 percent of the sum of the net earned premium and the net investment income earned on individual health benefits plans (as set forth in lines a and c, respectively, in Part E of Exhibit K). If 115 percent of the sum of the net earned premium and the net investment income earned on individual health benefits plans is greater than claims paid on individual health benefits plans, the amount shown on line d represents a net paid gain. If 115 percent of the sum of the net earned premium and the net investment income earned on individual health benefits plans is less than claims paid on individual health benefits plans, the amount shown on line d represents a net paid loss.

11:20-8.6 Certifications

(a) In Part F of the Exhibit K Assessment Report, the Chief Financial Officer, or other duly authorized officer of the carrier, shall certify that the Assessment Report, all Exhibit K Part C Premium Data Worksheets, and all Exhibit K Part D Enrollment Data Worksheets filed with the IHC Board are accurate and complete and conform with the requirements of this subchapter. Every duly authorized officer who provides a certification for the reporting required under this subchapter shall be responsible for errors contained therein.

(b) The Chief Financial Officer, or other duly authorized officer, of a member which has filed for reimbursement of losses shall certify, on or before March 1 of the year following every two-year calculation period that:

1. The net investment income reported on the Exhibit K Assessment Report has been allocated on a basis consistent with [N.J.A.C. 11:20-8.5\(d\)](#) or, if not, the changes have been outlined in detail including the impact and reason for the change.

11:20-8.7 Penalties for failure to file market share and net paid loss report

(a) Failure to file in a timely manner the Assessment Report and certifications required by this subchapter shall result in:

1. The denial of a member's application for exemption from assessments for reimbursable losses; and

2. The Board's using the premium set forth in the member's most recent Annual Statements filed with the Department as the premium base to calculate that member's market share allocation of assessments for reimbursement of losses.

11:20-8.8 Audits

(a) A member shall, upon written request of the IHC Program Board, provide additional information that the IHC Program Board may require to substantiate that the member has met the requirements in [N.J.A.C. 11:20-8.6\(b\)](#).

(b) The IHC Program Board shall review, and may audit, a member's reimbursable losses reported in the member's Assessment Report. The IHC Program Board shall choose and direct the independent auditor. The IHC Program Board and the member being audited shall share equally the cost of an independent audit.

(c) The IHC Program Board shall adjust a member's reported net paid losses, for purposes of determining reimbursement for losses for the preceding two-year calculation period, for the member's failure to meet the certification requirements of this subchapter or as a result of the findings of an independent audit conducted pursuant to (b) above. Such findings shall include the failure of a carrier to pay claims consistent with the terms of the applicable contract or applicable law, or to collect premiums consistent with the terms of its informational rate filing or applicable law.

11:20-8.9 Hearings

Any member that is denied reimbursement of losses, in whole or in part, on the grounds that the member has failed to meet the certification and reporting requirements of this subchapter, or as a result of the IHC Program Board's review of an independent audit of the member's reported net paid losses, may file an appeal of the Board's determination and request a hearing within 20 days of the date that the IHC Program Board notifies the member of its final determination, pursuant to the procedures set forth in [N.J.A.C. 11:20-20.2](#).

Attachment D

Audit Regulations

11:20-2.8 Audits

(a) The Board shall have an annual audit of its operations conducted by a qualified independent certified public accountant.

1. The auditor shall be selected and approved by the Board through a competitive bidding process of certified public accountants qualified in New Jersey to perform audits of the type of entity.

2. The annual audit shall include the following items:

- i. A review of the handling and accounting of assets and monies of the IHC Program;
- ii. A determination that administrative expenses have been properly allocated and are reasonable;
- iii. A review of the internal financial controls of the IHC Program;
- iv. A review of the annual financial report of the IHC Program; and
- v. A review of the calculation by the IHC Program of any assessments of carriers for net losses.

3. A copy of the annual audit and related management letters shall be delivered to each Director and to the Commissioner. The annual audit report shall be reviewed by the Technical Advisory Committee or Operations Committee, or both Committees, which shall present its recommendations to the Board for implementation of findings and recommendations made by the auditor. The actions adopted shall be reported to the Commissioner.

(b) The Board may, from time to time, direct that a member carrier arrange, or the Board may arrange, to have an audit conducted by an independent certified public accountant and a copy of the audit report of the member carrier delivered to the Board. All information regarding an audit of a member carrier conducted pursuant to this subsection shall be confidential and protected from disclosure by the member carrier, by the auditing firm, by the Board and the Commissioner.

(c) The Board shall conduct a full or partial audit of a carriers filing for reimbursement of losses. Carriers filing for reimbursement of losses shall provide, within 90 days of the Board's written request, the following minimum data to the Board or its appointed auditors:

1. With respect to information regarding premium earned:

- i. Detailed electronic data files of premiums which, in total, agree to the premiums earned reported to the IHC Board on the IHC Program Market Share and Net Paid Gain (Loss) Report. The data file or files shall include sufficient detail to identify the dollar amounts of premiums, by subscriber or contract number;
- ii. All underwriting and premium records relating to the premiums earned on the data files, including but not limited to, subscriber applications, billing records, cash receipt and disbursement records, advance premium and premium receivable records and rate filings;
- iii. A reconciliation, if necessary, between the total premiums earned per the data files requested in (c)1i above and the premium earned amount reported to the IHC Board on the Program Market Share and Net Paid Gain (Loss) Report, including an explanation of reconciling items; and
- iv. A reconciliation, if necessary, between the premiums earned amount reported to the IHC Board on the Program Market Share and Net Paid Gain (Loss) Report and premiums earned amount set for in the Member's Annual Statement Blank filed with the Department or Department of Health and Senior Services, as appropriate, including an explanation of reconciling items.

2. With respect to claims paid:

i. Detailed electronic data files of claims paid which, in total, agree to the claims paid reported to the IHC Board on the Program Market Share and Net Paid Gain (Loss) Report. The data files shall include sufficient detail to identify the dollar amounts of claims paid, by claim and subscriber number, and the payment reference such as check or wire transfer number. All claim file and disbursement records relating to the claims paid on the data file, such as claims submission forms, provider invoices, pricing data, eligibility investigations, canceled checks and wire transfer documentation;

ii. A reconciliation, if necessary, between the total claims paid per the data files requested in (c)2i above and the claims paid amount reported to the IHC Board on the Market Share and Net Paid Gain (Loss) Report, including an explanation of reconciling items; and

iii. A reconciliation, if necessary, between the claims paid amount reported to the IHC Board on the Market Share and Net Paid Gain (Loss) Report and the claims paid amount set forth in the Member's Annual Statement Blank filed with the Department or the Department of Health and Senior Services, as appropriate, including an explanation of reconciling items.

3. With respect to investment income:

i. Detailed schedules of net investment income which, in total, agree to the net investment income reported to the IHC Board on the Program Market Share and Net Paid Gain (Loss) Report. The schedules shall set forth the Member's calculation of net investment income allocated to the New Jersey individual line of business and shall include sufficient detail to identify the nature and source of the components used to calculate net investment income; and

ii. All source documentation used in the Member's calculation of net investment income, including, but not limited to, schedules used in the calculation of mean funds by line of business, cash receipt and disbursement records used in the cash flow schedules, and calculations for the Member's investment rate of return.

Attachment E

Confidentiality Agreement

Confidentiality Agreement

The contractor, its personnel and agents, shall maintain the confidentiality of all documents, records, and information received from the Board pursuant to the terms of this Contract, as well as any work papers, notes, and/or copies of documents, records, and information generated by the contractor.

The contractor, its personnel and agents, shall not disclose, discuss, or otherwise make available any documents, records, information, work papers, notes, or copies thereof except:

- (1) to the Board or its attorneys (and the contractor shall have no obligation to disclose its proprietary information);
- (2) as required by law, rule, regulation, subpoena or other administrative or legal process, or by applicable regulatory or professional standards or pursuant to court order or other binding legal precedent; or
- (3) as otherwise directed in writing by the Executive Director or Interim Executive Director of the Board, subject to the other terms of this Agreement.

The foregoing restriction shall not apply to documents, records, information, work papers, notes, or copies thereof (i) that are in the public domain at the time the contractor receives it; (ii) that become a part of the public domain without breach of this Contract by the contractor; (iii) that are known to the contractor prior to their receipt from the Board; (iv) that are developed by the contractor independently of any disclosures previously made by the Board to the contractor of such information; or (v) that are disclosed in connection with litigation pertaining hereto.

If the contractor, any personnel of the contractor, or agent of the contractor who is required to report to the contractor, receives a subpoena or order, or becomes subject to any other legal requirement mandating disclosure of any document, record, or information covered by this confidentiality provision from any entity or person not authorized to receive such document, record, or information under the terms of this Contract, the contractor will, to the extent permitted by applicable law or regulation, notify the Executive Director of the Board and give the Board an opportunity to contest the subpoena, order, or other legal requirement before complying with it. The contractor shall provide at least ten (10) days' notice unless the time constraints contained within the subpoena, order, or other legal requirement time constraints make that unfeasible. Under no circumstances shall the contractor produce documents pursuant to any subpoena, order, or other legal requirement before the date specified therein.

Signature: _____

Date: _____